

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI, OHIO

COPY

Shirley A. McClure

Plaintiff

vs.

Gannett Media Technologies
International (GMTI), et al

Defendants

Case No. C-1-01-751

OBJECTIONS TO INVALID
REPORT AND RECOMMENDATION
OF JULY 28, 2003

(Request To Remove Judge Hogan Filed
March 21, 2003 Prior to his Report and
Recommendation Filed July 28, 2003
Making the Report Invalid.
Hearing Requested with
Disciplinary Judge.)

PLEASE NOTE THAT JUDGE HOGAN PRESUMPTUOUSLY PROCEEDED WITH AN "ORDER" FILED JULY 27, 2003 AND ALSO A "REPORT AND RECOMMENDATION" FILED JULY 28, 2003 AS THOUGH PLAINTIFF'S REQUEST FOR HIS REMOVAL (AFFIDAVIT OF PREJUDICE FILED MARCH 20, 2003) DID NOT EXIST, HE FEARFULLY REFUSED TO ADDRESS IT THROUGH ANY PROPER CHANNELS, DEFAULT JUDGMENT REQUARD MORE DOCUMENTED EVIDENCE OF HIS PREJUDICE.

Judge Hogan's Report and Recommendation is Invalid

On March 21, 2003 I the Plaintiff, Shirley McClure filed an Affidavit of Prejudice (copy attached) *clearly* requesting that Judge Timothy Hogan be removed from my case and clearly stating the reasons ACCORDING TO LAW for this request (information I gathered stated that this is how a request to remove a judge should be titled - "Affadavit of Prejudice"). My notice requesting his recusal was filed earlier, also according to law, on September 26, 2002 as shown on page 7 in my "Notice of Appeal," which had already been refused by him without cause. (*See ethics of the profession about his and the defendants actions and also study the court record.*)

When I went to file this motion, I asked the court for instructions on how to file this, since *I logically wouldn't expect it to go to Judge Hogan because he wouldn't make a judgment against himself.* I was told to file it as usual with the clerk's office and told that when it was seen to be a request for removal of Hogan, it would be passed to another judge, preferably a visiting or disciplinary judge. But THIS DIDN'T HAPPEN, the records were tampered with. Since it didn't

happen and the judge obviously did not, and cannot, properly address the accusations about his unethical illegal conduct, and cause for his allowing the same of the defendants, then the default judgment mentioned on page 4 of my "Affidavit of Prejudice" filed March 21, 2003 is proper, legal, and in order, not only because this conduct was not properly addressed, in fact not at all, but also because the defendants cannot proceed with discovery in accordance with law, as seen in the court record, so this is an admission of defeat from the judge as well as the defendants.

Judge Pretends It Is A Recusal Default Judgment

I have received an Order filed July 27, 2003 that is invalid, since it is signed by Judge Hogan in which he states on page 1, line 3 that he construes my "Affidavit of Prejudice" filed March 21, 2003 as a motion for recusal. This cannot possibly be a mistake, since my notice asking for his recusal had already been filed and refused without cause by him earlier. Since "Recusal" does not even sound like "Prejudice", and the lettering on the "Affidavit of Prejudice" was big enough to read without glasses, he presumptuously, unethically, illegally, prejudisciously and fearfully, *chose* to construe this as a motion for recusal because he didn't want his actions discovered.

So then the default judgment mentioned on page 4 of this "Affidavit of Prejudice" filed by the Plaintiff, March 21, 2003 is legal and in order.

He obviously did not want another judge or outside party inquiring into why there is documented evidence presented of his ignoring criminal behavior of the defendants and all the other evidence presented by the Plaintiff a woman, up to and including the defendants inability to proceed legally with discovery. Also since there is nothing to indicate that "Affidavit of Prejudice" filed March 21, 2003 was a motion for recusal and since on the first line of the 2nd paragraph of page 1, this motion clearly states in all capital letters that "*PLAINTIFF HEREBY MOVES THAT JUDGE HOGAN BE REMOVED FROM THIS CASE.*" Then I proceeded to list the reasons, according to law, why he should be removed. Then again in the first paragraph of the last page (page 4) I make the following statement:

"For all the reasons stated above and in documents attached, I THE PLAINTIFF HEREBY DEMAND THAT JUDGE HOGAN BE REMOVED FROM THIS CASE DUE TO THE PREPONDERANCE OF THE EVIDENCE OF PREJUDICE AGAINST ME, showing undue favor to and in collusion with the defendants. Judge Hogan will be removed so that I may receive the opportunity for a fair and impartial hearing, and opportunity for justice that I am rightfully entitled to by law, which I believe would all be lost under Judge Hogan." (See ethics of the profession about his and the defendants actions and study the court record.)

Finally, at the bottom of page 4 of this "Affidavit of Prejudice" filed March 21, 2003 against Judge Hogan (who now claims is a "recusal"), the next to the last line, I state that: *"I hereby request that Judge Hogan be removed."* And that *"I respectfully ask that an impartial visiting judge be allowed to hear my case."* I ask you, how much clearer could I be?

There is no possible way that Judge Hogan could "construe" that this "Affidavit of Prejudice" filed March 21, 2003 was a request for recusal. In violation of my civil rights, he just simply tampered with the records and presumptuously chose to ignore that it was a request for his removal, since my request for him to remove *himself* had already been filed September 26, 2002 as shown on page 7 in my "Notice of Appeal". He *chose* to treat it as a request for recusal because he doesn't want to be off the case and have his actions scrutinized by an outside party.

This only adds to my proof of documented evidence that Judge Hogan is prejudiced against me a woman representing herself *Pro Se*, and shows undue favor toward the defendants by ignoring my civil rights and the preponderance of the evidence presented against the defendants also.

On the last line of the last page (page 5) of Judge Hogan's "Order" filed July 27, 2003 he claims that my motion for "recusal" is not warranted. However, THIS "ORDER" DOES NOT APPLY BECAUSE MY MOTION FILED MARCH 20, 2003 WAS PRIOR TO HIS "ORDER", AND WAS CLEARLY A REQUEST FOR REMOVAL, SO SHOULD BE ADDRESSED BY ANOTHER JUDGE. It's ridiculous to think that Judge Hogan should be allowed to make a judgment against himself on accusations of serious judicial misconduct, and that he would even admit to being prejudiced.

SO AGAIN, JUDGE HOGAN'S "REPORT AND RECOMMENDATION" FILED JULY 29, 2003 IS INVALID. Also, IT DOES NOT APPLY, because my motion was filed March 21, 2003 prior to this "Report and Recommendation" and ignored presumptuously by the Judge, and was clearly an "Affidavit of Prejudice" for Judge Hogan's removal so should have been addressed by another judge and or outside party.

In view of Judge Hogan's record, of documented evidence against him, of ignoring criminal behavior of the defendants in their obstruction of the case, and all the other evidence presented by the Plaintiff, with all due respect, I am hereby demanding that the "Affidavit of Prejudice" filed March 21, 2003 be dealt with as it should have been the first time when it was filed on March 21, 2003. And the "Report And Recommendation" filed July 28, 2003 and the "Order" filed July 27, 2003 be held out of order, nullified and considered beyond Judge Hogan's discretion and his illegal and unethical actions and of the named and unnamed defendants in this case, along with the demand for a default judgment, (since the defendants cannot proceed legally

with discovery) be reviewed and discussed by a hearing in front of a different judge, a fair and impartial visiting Judge monitored by an outside party.

Plaintiff's Objections to Report and Recommendation

Below are 3 examples in the Report and Recommendation of July 28, 2003 wherein Judge Hogan's plainly displays his undue favor toward the defendants and bias against the Plaintiff such as by making blatantly untrue statements about the Plaintiff, which, as usual, are in favor of the defendants:

Example 1:

From Page 3 of the Report and Recommendation of July 28, 2003 about half way down:
"Plaintiff objected to having any corporate representatives other than the deponent present.."

This is totally untrue and if the Judge read my statements or paid attention to them, he would have to know this is a lie. Please note the excerpt from page 19 of my Motion for Default filed March 20, 2003 in which the Plaintiff states the following:

"The question arises as to why there would have to be the same three, proven to be in a conspiracy against the Plaintiff and also named in the lawsuit. There are other corporate representatives of GMTI that could be there instead of Dan Zito and Natalie Dennis together, the ones who are both personally involved in harming the Plaintiff. Or there could be a corporate representative from the Gannett Co. -- which would make more sense, since they are a party to the lawsuit. "

So this clearly shows that the Plaintiff is not against having any corporate representatives present - an outright lie.

Example 2:

From Page 3 of the Report and Recommendation of July 28, 2003 about half way down:
"As for the second round of deposition dates noticed by plaintiff, defendant promptly informed plaintiff that Zito was unavailable."

This is clearly shown to be untrue as shown in defendant Roberts' own words from the transcript of the attempted depositions as shown on Page 40 of Motion for Default filed March 20, 2003:

Continued on from 1st attempted deposition, Page 6 Lines 7-9:

Mr. Roberts:

"I don't know if and when Mr. Zito is going to be available between now and the deadline."

And from Page 41 of the Motion for Default filed March 20, 2003:

From 2nd Attempted Deposition, Page 12 Line 4 – Page 13 Line 16:

Mrs. McClure:

"That's another thing. Did you know last Friday that Mr. Zito was going to be in Germany?"

Mr. Roberts:

"Yes".

Please note here that Mr. Roberts is caught in a bold faced lie, admitting that he did in fact know that Mr. Zito would not be available, when he said that he didn't know. Yet Judge Hogan defends Mr. Roberts, showing undue favor and bias, in stating on page 3 of his Report and Recommendation that "defendant promptly informed plaintiff that Zito was unavailable."

Example 3:

On page 3 of the Report and Recommendation of July 28, 2003 last two lines, Judge Hogan states concerning the plaintiff: *"...the fact that three days between the issuance of the notice and the deposition dates does not constitute "reasonable notice" as required under Fed. R. Civ. P. 30(b)(1)."*

Once again Judge Hogan shows under undue favor and bias - because when plaintiff asked for sanctions against defendant Michael Roberts because of harrasment, including that he demanded that I reschedule my deposition for three days later, *when the deadline was 6 months away* – the judge didn't do so much as make a simple statement that Mr. Roberts was unreasonable, as he did with me – even though in my case *the deadline was only a week away* and the defendants had maliciously obstructed the depositions from taking place time and again. Again, for which to my knowledge they did not even receive a reprimand – much less sanctions! (As requested in my Motion for Sanctions filed March 19, 2002) – This and more document evidence proving that if the defendant does something, it's perfectly okay, but if I the Plaintiff does it, it's not.

I have documented evidence and this evidence is in the court record and the judge knows that, and my default motion filed March 20, 2003 with 63 pages of documented evidence (copy

attached) was ignored and my request for a hearing on page 4 of my Affidavit of Prejudice filed March 21, 2003 has been ignored, showing undue favor to the defendant and again violating my civil right to have a fair and impartial hearing with a visiting judge monitored by an outside party as quoted on page three of this document.

Do Not Give to Judge Beckwith - Not Impartial

And this should not be given to Judge Beckwith, because she too has shown undue favor to the defendants by overlooking very serious judicial misconduct on the part of the defendants, and I have asked her to recuse herself as stated on page 62 of my Motion for Default filed March 21, 2003. Below are some examples.

Example 1: Judge Beckwith *completely ignored defendant Dan Zito's perjured affidavit* (Violation of Law) concerning diversity. When I the Plaintiff exposed Mr. Zito's affidavit to be perjury and he subsequently recanted his sworn testimony, Judge Beckwith prejudicially indicated that she felt defendant Mr. Zito's obvious lie was merely a "mistake" and gave him credit for not letting the "mistake" stand and "correcting" his testimony, (although it was I the Plaintiff who exposed his perjury). So Judge Beckwith did this rather than ordering sanctions against the defendants for perjury or granting me the requested default I deserved. Mr. Zito's affidavit was not in accordance with Federal Rule of civil procedure 11 that states it should not be "presented for any improper purpose, such as to harass or cause unnecessary delay or needless cost in litigation" since it was proven to be a lie not a mistake, it broke this rule.

Example 2: When my original deposition date in March of 2002 was postponed, defendants' attorney Michael Roberts harassed me the Plaintiff by calling me 5 times within 7 hours, including harassing one of my coworkers, demanding that she go and find me when I was away from my desk. *The court disregarded my complaint ignoring all the evidence presented, of this judicial and illegal misconduct of harrasment*, including a tape recording (recorded with defendant's permission by law) of these calls and my coworkers' affidavit, swearing to this harassment.

Of note is that the primary problem is Judge Hogan, proven to be in collusion with the defendants to produce blatant prejudicial decisions. Judge Beckwith, however, is involved primarily in that many of her decisions, like Judge Hogan's, are prejudiced in that clarifications are not made as to how or why they were reached, and therefore she should be removed from the case also and they show undue favor to the defendants.

Conclusion

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Records Tampered With

Once again, I am hereby demanding that the "Affidavit of Prejudice" filed March 21, 2003 be dealt with as it should have been the first time when it was filed on March 21, 2003 before the records were tampered with.. And the "Order" filed July 27, 2003 along with the "Report And Recommendation" filed July 28, 2003 and be held out of order, nullified and considered beyond Judge Hogan's and Judge Beckwith's discretion and their illegal and unethical actions and that of the named and unnamed defendants in this case, along with the demand for a default judgment as shown in the 63 page Motion for Default filed March 20, 2003 (*since the defendants cannot proceed legally with discovery*) be reviewed and discussed by a Hearing in front of a different judge, a fair and impartial visiting Judge, preferably a disciplinary one, monitored by an outside party.

Shirley McClure, Plaintiff
Attorney *Pro Se*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document is being sent to the attorney for the Defendants.

Shirley McClure, Plaintiff *Pro Se*